

Updated Informative Digest for
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Sections 4601, *Service of a Notice of Violation or Warning Notice*,
4603, *Penalties for Licensed or Unlicensed Retailers*,
4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*, and
4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*

On June 11, 2013, the State Board of Equalization (Board) held a public hearing on and unanimously voted to adopt the proposed amendments to California Code of Regulations, title 18, sections (Regulations) 4601, *Service of a Notice of Violation or Warning Notice*, 4603, *Penalties for Licensed or Unlicensed Retailers*, 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*, and 4605, *Penalties for Licensed and Unlicensed Manufacturers and Importers*, described in the notice of proposed regulatory action. There have not been any changes to the applicable laws or the effect of the adoption of the proposed amendments to Regulations 4601, 4603, 4604, and 4605 described in the informative digest included in the notice of proposed regulatory action. However, the Board, pursuant to Government Code section 11346.8, subdivision (c), added a comma after the reference to Business and Professions Code section “22974.3” in subdivision (f) of the text of the proposed amendments to Regulation 4603 and changed the period following the number “5” to a comma in subdivision (a)(3) of the text of the proposed amendments to Regulation 4604 to make the text of both regulations grammatically correct. The Board did not make any other changes to the text of the proposed amendments to Regulations 4601, 4603, 4604, and 4605.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on June 11, 2013, to comment on the proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

“Current Law

“On October 12, 2003, the State of California enacted Assembly Bill No. (AB) 71 (Stats. 2003, ch. 890 (Horton)), and section 1 of AB 71 added the Act to the BPC. As originally enacted, the Act imposed licensing requirements on all retailers, wholesalers, and distributors of cigarettes and tobacco products and all manufacturers and importers of cigarettes. In 2006, the State of California enacted AB 1749 (Stats. 2006, ch. 501 (Horton)), which added new provisions to the Act that imposed the same licensing requirements on manufacturers and importers of tobacco products as were previously imposed on manufacturers and importers of cigarettes.

“The Act is administered by the Board pursuant to BPC section 22971.2, and, in 2006, the Board adopted a number of regulations to implement, interpret, and make specific the Act’s licensing requirements. As relevant here, the Board adopted Regulation 4600,

Issuance and Contents of a Notice of Violation or Warning Notice, to require the Board to issue a Notice of Violation or Warning Notice to a person that has been issued a citation for a violation of the Act, and the Board adopted Regulation 4601 to prescribe the manner in which a Notice of Violation or Warning Notice shall be served. The text of Regulation 4601 is based upon the text of Revenue and Taxation Code (RTC) section 30206, which provides for the service of a notice of determination issued under the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.).

“The Board also adopted Regulations 4603, 4604, and 4605 to provide for the issuance of a Warning Notice, or the imposition of a 10-day, 20-day, or 30-day suspension, or the revocation of a license and the imposition of a fine for specified violations of the Act; and to provide for the reduction in the length of a suspension and changing a revocation to a 30-day suspension, when mitigating factors warrant. As relevant here, the second and third sentences in subdivision (f) of Regulations 4603 and 4604 and subdivision (e) of Regulation 4605 all currently provide that:

If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.4, 22978.6, or 22980.3, subdivision (a)(2).

“Effect, Objectives, and Benefits of the Proposed Amendments to Regulations 4601, 4603, 4604, and 4605

“Amendments to Regulation 4601

“A person has the right to appeal when the Board has alleged that the person violated the Act. When timely appeals are made, the Board is required to issue notices under Regulations 4700, *Appeal – Special Taxes and Fees Division*, 4701, *Appeal – Appeals Division*, and 4702, *Appeal – Board Hearing*. However, Regulation 4601 only prescribes the manner of serving a Notice of Violation or Warning Notice, and there is no regulation expressly prescribing the manner in which the Board shall serve other notices required to be served under the Act, such as the notices required by Regulations 4700 through 4702. Therefore, the intent and objectives of the proposed amendments to Regulation 4601 are to make the regulation prescribe the manner of serving all of the notices the Board is required to serve under the Act, require that all of the notices be served in the manner prescribed for service of a notice under BPC section 22971.5, and generally ensure that the regulation is consistent with BPC section 22971.5. The Board anticipates that the public, including regulated persons, will benefit from the increased openness and transparency regarding the procedures for the service of all notices required under the Act.

“The text of the proposed amendments to Regulation 4601 is slightly different than the text that the Board approved on June 26, 2012. The original text provided that “Any

notice issued under the Cigarette and Tobacco Products Licensing Act may be served personally or by mail in the manner prescribed for service of a notice of determination under Revenue and Taxation Code section 30206 of the Cigarette and Tobacco Products Tax Law.” However, section 22971.5 was added to the BPC after the Board’s adoption of Regulation 4601 to prescribe the manner for serving any notice required under the Act. Therefore, the Board revised the approved text of the amendments to Regulation 4601, prior to beginning the formal rulemaking process, in order to make the text of the Board’s proposed amendments to Regulation 4601 fully consistent with the provisions of BPC section 22971.5, which are substantially similar to the provisions of RTC section 30206. The Board’s proposed amendments provide that “Any notice issued under the Cigarette and Tobacco Products Licensing Act may be served personally or by mail in the manner prescribed for service of a notice under Business and Professions Code section 22971.5.”

“Amendments to Regulations 4603 through 4605

“Regulations 4603 through 4605 provide that a suspension period may be reduced to “0 days, 10 days, or 20 days” when mitigating factors warrant, but the regulations do not give the Board sufficient flexibility to reduce suspensions because there are situations where a 10-day suspension is too harsh, a 0-day suspension would not be sufficient to deter violations of the Act, and a suspension period of more than 0 days and less than 10 days would be appropriate. The intent and objectives of the proposed amendments to Regulations 4603 through 4605 are to add a 5-day suspension period to the regulations to specifically give the Board additional flexibility to reduce suspensions based upon staff’s belief that a 5-day suspension period is long enough to deter violations of the Act, in some circumstances, and that Board staff has a sufficient amount of time to perform an inspection during a 5-day suspension period. The Board anticipates that the Board and regulated persons will benefit by the establishment of a fair, 5-day suspension period to address such situations.

“In addition, the intent and objectives of the proposed amendments to Regulations 4603 through 4605 are to clarify the regulations’ cross-references to statutes that require the revocation of retailers’, wholesalers’, distributors’, manufacturers’, and importers’ licenses for specified violations of the Act; and the Board anticipates that the Board and regulated persons will benefit from the additional clarity provided by the proposed amendments.

“The proposed amendments also update the reference notes to Regulations 4601, 4603, 4604, and 4605 to better reflect the contents of each reference note’s regulation.

“Business Taxes Committee Process

“The Board approved the amendments to Regulation 4601, 4603, 4604, and 4605 (described above) during the Board’s June 26, 2012, Business Taxes Committee meeting, but, at the conclusion of the meeting, the Board voted to postpone proposing the amendments to Regulations 4601, 4603, 4604, and 4605 while the Board considered whether to propose the adoption of an additional regulation to implement, interpret, and

make specific other provisions of the Act. During the Board's January 15, 2013, Business Taxes Committee meeting, the Board unanimously voted to begin the formal rulemaking process to propose the amendments to Regulations 4601, 4603, 4604, and 4605 at this time, and the Board did not decide to propose to adopt a new regulation at that time.

“The Board has performed an evaluation of whether the proposed amendments to Regulations 4601, 4603, 4604, and 4605 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 4601 is the only state regulation prescribing the manner for serving a notice issued under the Act and Regulations 4603 through 4605 are the only state regulations prescribing the Board's discretion to reduce a suspension imposed under the Act. In addition, there are no comparable federal regulations or statutes to Regulations 4601, 4603, 4604, and 4605.”